

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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Robert High,

Case No. 2:23-cv-00847-APG-DJA

Plaintiff,

Order

V.

NDOC, et al.,

Defendants.

11 Before the Court is pro se Plaintiff Robert High's motions for appointment of counsel
12 (ECF Nos. 38, 47) and motions to extend time (ECF Nos. 39, 43). Because the Court finds that
13 Plaintiff has not demonstrated exceptional circumstances, it denies Plaintiff's motions for
14 appointment of counsel. (ECF Nos. 39, 43). Because the Court finds that Plaintiff's first motion
15 to extend time is moot, it denies it. (ECF No. 39). However, because the Court finds that
16 Plaintiff has shown good cause to extend discovery in his second motion, the Court grants it.
17 (ECF No. 43).

I. Motions for appointment of counsel.

19 A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983
20 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Under 28 U.S.C.
21 § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford
22 counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional
23 circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When
24 determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of
25 success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light
26 of the complexity of the legal issues involved.’” *Id.* “Neither of these considerations is
27 dispositive and instead must be viewed together.” *Id.*

1 In Plaintiff's motion for appointment of counsel filed on January 15, 2025, Plaintiff
2 explains that he suffers from spinal disabilities that make it difficult for him to sit, walk, twist,
3 bend, and lift and that hinders his ability to concentrate for long periods and to write. (ECF No.
4 38). Plaintiff asserts that he cannot litigate his case without counsel because he is restricted to his
5 bed for most of the day. (*Id.*). In his motion for appointment of counsel filed on March 25, 2025,
6 Plaintiff gives detailed reasoning and case law to support his argument that the Court should
7 appoint him counsel. Plaintiff argues that his case is factually complex because it involves
8 medical indifference and so, a medical expert will be necessary. Plaintiff asserts that he is unable
9 to adequately investigate the facts of his case because he is in segregation. So, he has no access
10 to the law library and instead must request legal authority via institutional mail, which mail is
11 sometimes lost. The number of requests Plaintiff can make for legal authority are also limited
12 and Plaintiff is unable to possess his medical records, which are vital in this case. Plaintiff adds
13 that, the fact that he is in segregation means that he is essentially in the same position as an
14 inmate who had been transferred to another institution because he cannot identify or interview
15 potential inmate witnesses. Plaintiff asserts that his version of events and Defendants' sharply
16 contrast and so, counsel will be helpful in addressing the disparity. Plaintiff adds that he is
17 indigent and completely reliant on a prisoner assistant who has also been the subject of retaliation
18 and destruction of legal materials. Plaintiff concludes that he has demanded a jury, which
19 increases the complexity of his case, and asserts that his case is meritorious.

20 The Court denies Plaintiff's motion because it does not find that he has demonstrated
21 exceptional circumstances. Plaintiff has alleged claims related to Defendants' denial of medical
22 care and use of excessive force, which claims have passed screening. But screening is a
23 preliminary bar, and simply determines whether a plaintiff has stated a claim upon which relief
24 can be granted, not whether that claim will ultimately be successful. And while Avram has filed a
25 motion for summary judgment, Plaintiff has not yet responded to that motion and no other
26 Defendants have filed dispositive motions. So, the Court has not yet had the opportunity to
27 determine the merits of Plaintiff's case beyond screening. The "likelihood of success on the
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1 merits” prong does not weigh in favor of granting Plaintiff’s motion at this stage in the case, but
2 could potentially warrant counsel at some future stage.

3 This is particularly true because Plaintiff has demonstrated an ability to articulate his
4 claims pro se in light of their complexity. In his January 15, 2025, motion, Plaintiff asserted that
5 he is dealing with significant physical barriers to working on his case. However, a few months
6 later, Plaintiff nonetheless filed a detailed motion explaining why he believes he is entitled to
7 counsel and the challenges he is facing and providing case law to support his position. In that
8 motion, Plaintiff also indicates that he has been able to rely on the help of another inmate to
9 pursue his case. Additionally, the struggles Plaintiff describes in his March 25, 2025, motion are
10 struggles that all inmates in segregation must face when litigating their claims. And, as outlined
11 more below, Plaintiff has indicated an ability to seek extensions of time when necessary. So, he
12 has demonstrated an ability to address the setbacks he faces in segregation. Plaintiff has also not
13 identified any specific witnesses he has been unable to locate or depose because of his segregated
14 status or indicated whether he has attempted to do so and been thwarted. Plaintiff also does not
15 indicate whether, despite the fact that he cannot possess his medical records, he has been unable
16 to view or use his medical records at all, or that the manner in which he has been able to view or
17 use those records has been prohibitive. And while Plaintiff indicates that he has sought a jury
18 trial and that his case is complex and contested, Plaintiff’s case has not yet reached the trial stage.
19 Again, counsel may at some point be appropriate in this case. But not at this stage. The Court
20 denies Plaintiff’s motions for appointment of counsel without prejudice.

21 **II. Motions to extend discovery.**

22 Discovery is currently set to close on March 11, 2025. (ECF No. 35). On February 19,
23 2025, Plaintiff moved for a ninety-day extension of discovery and for an additional forty-five
24 days to respond to discovery requests propounded by Defendant Huggins. (ECF No. 39).
25 Plaintiff explains that he attempted to communicate with Huggins’ counsel regarding the
26 extension, but did not get a response, so he seeks the extensions in an abundance of caution.
27 Huggins did not oppose Plaintiff’s motion for a ninety-day extension of discovery in response.
28 (ECF No. 41). Huggins explains, however, that his counsel had a call with Plaintiff and the

1 parties agreed that Plaintiff would respond to Huggins' discovery requests on March 11, 2025.
2 So, Huggins asks that the Court deny Plaintiff's request for an additional forty-five days to
3 respond to Huggins' request as moot. Plaintiff did not file a reply.

4 On March 4, 2025, Plaintiff filed a new motion for a ninety-day extension of discovery
5 and for an additional forty-five days to respond to Defendant Avram's discovery requests. (ECF
6 No. 43). Plaintiff explains that he attempted to communicate with Avram's counsel regarding the
7 extension but did not get a response. So again, he seeks the extensions in an abundance of
8 caution. Avram responded and does not oppose the motion. (ECF No. 44).

9 The Court denies Plaintiff's first motion as moot and grants his second motion. Because
10 both of Plaintiff's motions seek a ninety-day extension of discovery, Plaintiff's first request is
11 moot. Because Plaintiff has resolved his request for an extension of time to respond to Huggins'
12 discovery request, his first request is also moot in that regard. Avram has also not opposed
13 Plaintiff's second request and no other party has filed a response, constituting their consent to the
14 Court granting Plaintiff's motion. *See* LR 7-2(d). Additionally, the Court finds that Plaintiff has
15 shown good cause for the extension. *See* Fed. R. Civ. P. 16(b)(4); *see* LR 26-3.

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1 **IT IS THEREFORE ORDERED** that Plaintiff's motions for appointment of counsel
2 (ECF No. 38, 47) are **denied**.

3 **IT IS FURTHER ORDERED** that Plaintiff's motion to extend discovery (ECF No. 39)
4 is **denied as moot** and his renewed motion to extend discovery (ECF No. 43) is **granted**.
5 Plaintiff shall have until April 21, 2025, (which is forty-five days after his responses were
6 originally due)¹ to respond to Avram's discovery requests. Additionally, the Court extends the
7 discovery deadline, and all deadlines following it, by ninety days as outlined below:

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9 Discovery cutoff: June 9, 2025
10 Discovery motions: June 23, 2025
11 Motions for summary judgment: July 9, 2025
12 Joint pretrial order: August 8, 2025²

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14 DATED: April 17, 2025



DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE

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24 ¹ Plaintiff asserts that he received Avram's requests for production, requests for admission, and
25 interrogatories on February 5, 2025. The deadline for responding to all three of those discovery
26 requests is thirty days after service, in this case March 7, 2025. *See Fed. R. Civ. P. 34(b)(2)(A)*
27 (requests for production); *see Fed. R. Civ. P. 33(b)(2)* (interrogatories); *see Fed. R. Civ. P.*
28 *36(a)(3)* (requests for admission).

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30 ² Under Local Rule 26-1(b)(5), if dispositive motions are filed, the deadline for filing the joint
31 pretrial order will be suspended until thirty days after decision on the dispositive motions or
32 further court order.